



April 25, 2011

The Honorable Jerome Horton, Chair
California State Board of Equalization
450 N Street, MIC 72
Sacramento, CA 95814

Subject: Proposed Regulation 1685.5, Calculation of Estimated Use Tax –Use Tax Table

Dear Honorable Jerome Horton:

The California Taxpayers Association is a nonpartisan, nonprofit association that supports good tax policy, opposes unnecessary taxes and promotes government efficiency. CalTax urges the members of the Board of Equalization to postpone adoption of the proposed regulations for the use tax look-up table.

To date, no interested parties meetings have been held to discuss the use tax table. CalTax believes that the interested parties meeting process is crucial to developing a fair and accurate table. The table proposed in Regulation 1685.5 is neither accurate nor a fair representation of what a taxpayer's use tax liability would be under the law. Listed below are CalTax's concerns:

- **Use Tax Table Methodology Needs Further Review.** The use tax table relies on several estimates that need further clarification to substantiate the accuracy of the table's calculation. For example, the regulation uses data that shows use tax liabilities have grown exponentially during the past several years, despite a global financial crisis and the crash of the housing market.
- **Does the Use Tax Table Seek to Generate Revenue Beyond What is Owed?** Another concern CalTax has is whether the BOE's design of the lookup table generate revenue beyond what is owed. As intended, the use tax table should purely be a tool for the Board to improve compliance.

Of the nine other states currently utilize use tax lookup tables, three states have a set range for taxpayers to use when calculating their use tax liability. Basing the use tax table percentage on a range make the use tax liability computation more reasonable, and reflects differences in consumption patterns.

- **Use Tax Table Does Not Account for Different Local Use Tax Rates.** Local sales and use tax rates differ by city and county, and such differences should be reflected in a lookup table. The Board of Equalization could address use tax rate differences by creating a new publication. The BOE already publishes data in [Publication 71](#), which lists the sales and use tax rates for all counties, cities and special districts in California.

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- **Use Tax Table Does Not Reflect Prospective Changes in the Use Tax Rate.** It is uncertain whether the use tax rate will remain at 8.25 percent past June 30. Currently, the Legislature is deliberating whether the rate should be extended. It is uncertain what will happen. The regulation assumes the rate will continue by using the January 1 use tax rate for the entire year.

CalTax looks forward to working with the Board of Equalization members and the Board's staff as the use tax table is implemented. However, for the foregoing reasons, we respectfully request that the Board postpone enactment of the use tax lookup table and vet the regulation through the interested parties' process.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert Gutierrez', with a large, sweeping flourish extending to the right.

Robert Gutierrez, Research Analyst
California Taxpayers Association

cc: Honorable Michelle Steel, Vice Chair, California State Board of Equalization
Honorable Betty T. Yee, California State Board of Equalization
Honorable George Runner, California State Board of Equalization
Honorable John Chiang, State Controller
Jeff McGuire, Deputy Director of the Sales and Use Tax Department